

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5687 of 1985

with

SPECIAL CIVIL APPLICATION No 1467 of 1986

Date of decision: 8-9-97

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CHANDLODIYA GRAM PANCHAYAT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5687 of 1985
MR JS PATEL for Petitioners
Mrs. Siddhi Talati for Respondent No. 1, 2
2. Special Civil Application No 1467 of 1986

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision:8-9-97

CAV JUDGEMENT

Special civil application No.1467 of 1985 was not on the Board. At the request of the counsel for the parties, the said matter was called for. In both these petitions common question of law and facts are raised, and as such they are being disposed of by this common judgment.

2. In Special Civil Application No.5687 of 1985 there are five petitioners. Petitioner No.1 is Chandlodia Gram Panchayat. Other four petitioners are staying in Chandlodia village and they are working in different departments / schools in Chandlodia village, Taluka and District Ahmedabad. In special civil application No.1467 of 1986 also there are five petitioners, who are staying in Sarkhej Village, City Taluka, District Ahmedabad, and working in different departments / schools in Sarkhej Village.

3. The Government vide its Resolution dated 18th April, 1993 have reclassified cities and towns in Gujarat for the purpose of drawal of compensatory local allowance and house rent allowance based on population figures of 1981 on the lines followed by the Government of India. Respondent No.1 had accepted the recommendation of the Gujarat State Third Pay Commission and accordingly reclassified the cities and towns in Gujarat as per annexure I and II to the said resolution. This revised order was applied without prejudice to the admissibility of house rent allowance / compensatory local allowance to State Government employees in certain places sanctioned under Special power of the Department and the rates of compensatory allowance and house rent allowance that would be admissible on account of reclassification was also given in the said resolution.

4. Village Sarkhej and village Chandlodia did not fall in the urban agglomeration area of Ahmedabad at the relevant time and consequently the aforesaid resolution was not applicable to these areas, and the petitioners who were staying and working in those areas were not entitled to the benefit of the aforesaid resolution dated

18th April, 1983. Hence this special civil application.

5. Urban Land (Ceiling and Regulation) Act, 1976 has come into force on 17th February, 1976 in the State of Gujarat. Section 2(n) of the Act defines 'urban agglomeration' --

(A) in relation to any State or Union territory specified in Col.(1) of Sch.I, to mean --
(i) the urban agglomeration specified in the corresponding entry in Col.(2) thereof and includes the peripheral area specified in the corresponding entry in Col.(3) thereof; and
(ii) any other area which the State Government may, with the previous approval of the Central Government, having regard to its location, population (population being more than one lakh) and such other relevant factors as the circumstances of the case may require by notification in the official Gazette, declared to be an urban agglomeration and any agglomeration so declared shall be deemed to belong to category D in that Schedule and the peripheral area therefor shall be one kilometer;

(B) in relation to any other State or Union territory, means any area which the State Government may, with the previous approval of the Central Government, having regard to its location, population (population being more than one lakh) and such other relevant factors as the circumstances of the case may require, by notification in the official Gazette, declare to be an urban agglomeration and any agglomeration so declared shall be deemed to belong to category D in Sch.I and the peripheral area therefor shall be one kilometre;"

So Ahmedabad Urban agglomeration limit has been prescribed under a statute. The petitioners, only on the ground that village Chandlodia may be hardly at a distance of 1 kilometre from the urban agglomeration limit of Ahmedabad, or may be a little higher in the other case, have based their claim for grant of compensatory local allowance and house rent allowance as per resolution dated 18-4-1983. Challenge has not been made by the petitioners to the schedule attached to the aforesaid Act. Unless this court ultimately declares it to be ultra vires the Act and of the Constitution, the claim of the petitioners of benefits under Resolution dated 18th April, 1983 is not tenable. The petitioners have prayed for direction to respondent No.1 to include village Sarkhej in one case and village Chandlodia in the other case in the urban agglomeration of Ahmedabad City.

This court cannot issue a mandamus to the respondent No.1 to include those areas in the urban agglomeration limit of Ahmedabad City. It is for respondent No.1 to decide. However, the learned counsel for the petitioner admits that vide notification dated 13th June, 1986 these two villages have been ordered to be included in the urban agglomeration limit of Ahmedabad City and the effect has been given from 1st March, 1986. Thus from 1st March, 1986 the petitioners are getting benefit of Resolution dated 18th April, 1983.

6. What the counsel for the petitioners prays for is that they are entitled to the benefit from 1st August, 1982. But that claim does not stand to any merit. Admittedly when these villages have been included in the urban agglomeration of Ahmedabad from 1st March, 1986 the petitioners' claim for period earlier to this date is not tenable. As stated earlier, the petitioners have not challenged the validity of the schedule and the only prayer which has been made is for inclusion of the villages in the Ahmedabad urban agglomeration area, which has now been included. Therefore, otherwise also none of the grievances of the petitioners survives.

7. In the result this special civil applications fail and the same are dismissed. Rule discharged. No order as to costs.

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